

REMARKS

This Amendment is submitted in response to the Office Action dated November 19, 2004 regarding the above-referenced patent application. The Patent Office has asserted that Applicants' Amendment that were previously submitted on July 19, 2004 and received by the Patent Office on July 22, 2004 was not fully responsive to the prior Office Action dated February 20, 2004. The most recent Office Action (e.g., dated November 19, 2004) supplants the Office Action mailed on October 14, 2004 which has been vacated as indicated on page 2 of the most recent Office Action.

As indicated above, Applicants have amended Claim 30 to again recite a method for promoting recovery of a specific organ. This Amendment is responsive to the Patent Office's restriction requirement as alleged in the most recent Office Action. Further, Applicants submit that the amendment should not be construed as narrowing and/or disclaiming any claimed subject matter in view of same. Applicants reserve the right to file a divisional application(s) regarding any claimed subject matter that has not been elected to date during the prosecution of the present application. Accordingly, Applicants respectfully request that Claims 30, 32, 35 and 37-41 be entered and examined on the merits and further in view of the Office Action that was previously mailed on February 20, 2004.

With respect to the Office Action dated February 20, 2004, Claims 30, 32 and 37-41 were rejected under 35 U.S.C. § 112 first and second paragraph; and Claims 30, 32 and 37-41 were rejected for alleged obviousness reasons. As previously discussed, Claim 30 has been amended. Further, Claims 35, 37 and 38 were amended in Applicants previously submitted Amendment that was filed on July 19, 2004, and, thus, Claims 30, 32, 35 and 37-41 are presently pending as indicated above. Applicants believe that the § 112 rejections and obviousness rejections as alleged in the Office Action dated February 20, 2004 should be withdrawn as further detailed below and, to the extent applicable, as argued in Applicants' Amendment previously submitted on July 19, 2004.

With respect to the rejections under 35 U.S.C. § 112, first and second paragraphs, the Patent Office alleges that the claimed term "method for promoting recovery" fails to satisfy the enablement requirement pursuant to the first paragraph of § 112 and is indefinite pursuant to the second paragraph of § 112. Applicants believe that the rejections under § 112 are improper.

Of the pending claims, Claim 30 is the sole independent claim. As previously indicated, Claim 30 now amended recites a method for promoting recovery of a specific organ. Applicants believe that this claim language is fully supported in the specification such that one skilled in the art should readily understand the scope and meaning therefore and thus be able to practice the claimed invention without undue experimentation. Moreover, Applicants believe that the claimed term at issue is definite in scope in meaning and as also supported in the specification. Indeed, the Patent Office refers to page 8, line 19-23 of the specification as an example of support for the claimed term at issue and thus effectively concedes Applicants' position. Therefore, Applicants believe that the rejections under 35 U.S.C. § 112, first and second paragraph should be withdrawn for at least these reasons.

In the Office Action (e.g., dated 2/20/04), the claims are rejected for alleged obviousness reasons as previously discussed. Applicants submit that the cited art fails to disclose or suggest the claimed invention. Generally speaking, prior to Applicants' claimed invention, Applicants submit that no one recognized the fact that the degree of hydrolysis of a dietary protein affects not only where in the digestive tract it is absorbed but also the locations at which the nutrients are available. Applicants' invention is not that hydrolyzed protein are absorbed in the duodenum and less hydrolyzed proteins are absorbed lower in the GI tract, but the surprising discovery is the marked use of the nutrients at the location they are absorbed. Thus, Applicants can use the degree of hydrolysis to target protein synthesis in certain organs.

Again, nowhere does the cited art, even if properly combinable, disclose or suggest such claimed features. For example, the emphasis of *Nakamura* and *Masuda* relates to isolated peptides (see, *Nakamura*, p. 1253) and inhibitory peptides (see, *Masuda*, p. 3063).

Further, the Patent Office relies on *Verma* to support *Gordon* or *Tomita*. But, Applicants respectfully submit that this rejection is not proper in that in part it is based on a hindsight reconstruction. Indeed, both *Gordon* and *Tomita* relate to products for topical application where *Verma* relates to products for surgical implantation. There is absolutely no rhyme or reason why one skilled in the art viewing a topical application reference would be motivated to combine it with a surgical implantation reference.

With respect to *Smith*, this reference relates to the identification in milk of growth factors similar to IGF-1. It should be noted that such growth factors exist in milk independent of its nutritional content. This is in contrast to the present invention wherein the specific dietary milk protein hydrolysate is selected. Thus, Applicants' method of selecting a form of dietary milk

protein hydrolysate, specifically required by independent Claim 30, is neither disclosed nor suggested.

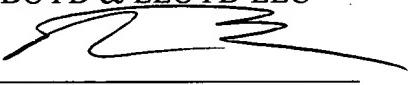
With respect to *Jolles*, this reference discloses the administration of a single tripeptide obtained by hydrolysis of human casing as an immunostimulant. Such a product would have a negligible nutritional content. By contrast, the present invention provides sufficient nutritional value of the protein and merely varies the targeted organ. Thus, in the examples set forth by the Patent Office, the proposed hypothetical rat would die of malnutrition. Accordingly, Applicants respectfully submit that the rejection is not proper, in part, in that the reasons provided by the Patent Office for justifying the rejection demonstrates the rejection is not proper. Further, the reference does not disclose or suggest the subject matter as defined by Claim 30 and dependents thereof.

Moreover, *Vickery* is not prior art to the present application. Indeed, *Vickery* has a priority date of May 28, 1998 where Applicants' present application has a priority date of September 16, 1997. Based on at least these reasons, Applicants respectfully request that the obviousness rejections be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

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